ENVIRONMENTAL APPEAL BOARD

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The Honourable John Cashore
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Sir:

I respectfully submit herewith the annual report of the Environmental Appeal Board for the period July 1, 1991, through June 30, 1992.

Yours truly,

Linda Michaluk, R.P. Bio.
Chairman
Environmental Appeal Board

Table of Contents

Introduction 1

The Board 2

- Administrative Law 2
- Board Membership 2

Hearings 3

Appeal Procedures 3

- Notice of Appeal 4
- Timing and Nature of Hearings 4
- Rules of Evidence 4
- Decisions of the Board 5
- Appeals against Decisions 5

Decisions 5

- *Pesticide Control Act* 5
- *Waste Management Act* 7
- *Water Act* 8
- *Wildlife Act* 9

Summary 10

Appendix 13

1 INTRODUCTION

This is the second Annual Report of the Environmental Appeal Board and should help promote better understanding of the Board's duties and activities. It addresses decisions rendered by panels of the Board from July 1, 1991 to June 30, 1992. Appeals which were withdrawn are not included.

Section 5 contains information on decisions made by the Board under each act. There is no section for the *Commercial River Rafting Safety Act* as there were no appeals received under this act during this period. As a matter of interest, the Board has never received an appeal under this act.

An appendix has been added this year which presents summaries of the decisions addressed by this report.

This report also contains some very general information about the functions of the Board. For further information, the reader is referred to the specific acts. Questions can also be addressed to:

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Decisions of the Board may be viewed at any of the following libraries:

- BC Environment Library
- University of British Columbia Law Library
- British Columbia Court House Library Society
- West Coast Environmental Law Library

At the time of preparing this report negotiations were underway to also have the decisions available through Quick Law Data Base and the Environmental Law Digest.

Act-specific pamphlets explaining the appeal procedure are available through the Board office.

2 THE BOARD

The Environmental Appeal Board is established under the provisions of the *Environment Management Act* (1981). It is an independent agency whose purpose is to hear appeals from decisions under five statutes administered by the Ministry of Environment, Lands and Parks, namely: the *Pesticide Control Act*, the *Waste Management Act*, the *Water Act*, the *Wildlife Act* and since 1988 the *Commercial River Rafting Safety Act*. In deciding appeals, the Board applies the principles of administrative law.

2.1 Administrative Law

The principles of administrative law include the concept of jurisdiction, the rules of natural justice and the rule against bias.

In other words, the decisions of the Board must be made only after treating all parties to the hearings fairly and only on the evidence presented at the hearing. Failure to observe the administrative law requirements for fair procedure may result in the court declaring a decision void, and overturning it or sending it back for reconsideration.

2.2 Board Membership

The Board, appointed by the Lieutenant Governor in Council, consists of part-time members, all of whom are outside the public service. The appointments are made by Order in Council and are for a two-year term. The membership of the Board is drawn from across the province and represents diverse business and technical experience.

In 1990, nine members were returned to the Board and 12 new members, including the Chair, were appointed.

During the 1991/92 period, the Board consisted of three medical doctors, five lawyers, two professional engineers, two agriculturists, a biochemist, a horticulturist, a registered professional biologist, a teacher and five members with assorted backgrounds and interests in environment and business endeavours. In addition, six members had experience in municipal government.

The Board for this report period consisted of the following members:

Ms. Linda Michaluk (Chair)	Victoria
Mr. Harry Hunter (Vice-Chair)	White Rock
Dr. Olga Barrat	North Vancouver
Ms. Lori Cohen	Vancouver

* Ms. Donna Gillis	Vancouver
Ms. Margaret Gregory	Surrey
Mr. Scott Hall	Victoria
Mr. Hugh Hodgkinson	Hudson Hope
Mr. Robert Holtby	Prince George
Ms. Victoria Huntington	Ladner
Ms. Dianne Kerr	Kamloops
Dr. Anthony Larsen	Victoria
Ms. Heather Michel	Burnaby
Mr. Colin Palmer	Powell River
Mr. John Pousette	Terrace
Dr. Marjorie Ryan	Powell River
Mr. Joseph Schaefer	Kamloops
Mr. Roald Skov	Vancouver
Dr. Max Smart	Nanaimo
Dr. John Smith	Vancouver
Mr. Jos Van Hage	Prince George

* resigned due to personal commitments, September 9, 1991.

3 HEARINGS

The Board sits in panels of one, three or five members to hear appeals. It is the responsibility of the Chair to structure the panel for each appeal, ensuring the required technical expertise is present to properly adjudicate the appeal.

Hearings are held in the community closest to the area affected by the order being appealed against. This is generally the home community of the appellant. While this can represent a significant amount of travel for panel members, it allows the public in the affected area to be involved, should they so choose. It also allows the panel to view the area if required.

Oral hearings are conducted unless both parties request to proceed by written appeal. The Board has, on occasion, ordered that an appeal which has begun as an oral procedure will conclude in writing so that matters may proceed in a timely fashion.

4 APPEAL PROCEDURES

The regulations governing appeals are found in the various acts. Each act has specific regulations regarding appeals. Therefore, the reader is referred to the statutes for specific information.

4.1 Notice of Appeal

In general a prospective appellant presents a Notice of Appeal by registered mail to the Environmental Appeal Board office. This notice should contain the grounds for appeal, the orders sought, the name and mailing address of the responsible party and a cheque for $25 for each order being appealed. The notice must be filed within the time period identified in the relevant act.

4.2 Timing and Nature of Hearings

Once an appeal has been accepted by the Board, involved parties are identified and notified, and a hearing date is assigned. In most cases, a date is set within 45 days to two months of the appeal being filed. The period can vary depending on the matter under appeal. The Board will consider requests for extensions from the parties to allow sufficient time for preparation, and will exercise discretion in deciding whether to grant the extensions.

Because of the quasi-judicial nature of the hearing, the procedure is similar to that of a court. Parties are sworn, evidence is presented and witnesses are cross-examined. All hearings are open to the public.

4.3 Rules of Evidence

The rules of evidence for the Board differ somewhat from that of a court. These rules are:

The Board will receive all evidence submitted by the parties which the Board considers relevant.

The Board may determine, subject to the rules of natural justice, the manner in which evidence will be admitted.

The Board encourages parties to disclose to the other parties all evidence in advance of the hearing so all are prepared to proceed from an informed position. Advance notice of expert evidence should consist of a brief statement of the expert's qualifications and areas of expertise, the expert opinion to be tendered at the hearing and the basis of such opinion.

The Board accepts that it may not always be possible for disclosure of evidence to be given in advance. Where evidence, including expert evidence, which a party could not reasonably anticipate is presented at a hearing without any or adequate prior notice, a party may request an adjournment to consider the evidence, prepare for crossexamination and, if necessary, arrange for witnesses to address it. The Board will exercise discretion whether to grant such requests.

4.4 Decisions of the Board

Decisions are not stated at the conclusion of the hearing. Rather, the written decision follows in about one month. Copies of the decision are mailed to the parties involved and the Minister of Environment, Lands and Parks. Once the Board has confirmation that all parties to the appeal have received their copies of the decision, or after two weeks, copies of decisions are publicly available.

4.5 Appeals against Decisions of the Environmental Appeal Board

Decisions of the Board are final; therefore, the Board may not reconsider or comment on a decision once it is set down. However, section 12 of the *Environment Management Act* gives the Lieutenant Governor in Council (Cabinet) authority to vary or rescind an order or decision of the Board in the public interest.

Decisions of the Board can also be challenged through an application to the court for a judicial review. The court will examine the matter to determine whether or not the principles of administrative law were followed and will rule accordingly. Generally, the ruling will uphold the decision, or will quash it and order the Board to reconsider the matter with certain qualifications.

5 DECISIONS

For the purposes of this report, the decisions have been grouped together according to the act under which appeals were filed.

5.1 Pesticide Control Act

Under section 15 of the *Pesticide Control Act*,

> (1) An appeal may be filed by any person with the board against the action, decision or order of the administrator or of any other person under this *Act*.
>
> (4) On an appeal the board may make an order it considers appropriate . . . .

The duty of the Board in hearing appeals against pesticide use permits is to determine on the evidence presented whether applying the pesticide in the manner authorized by the permit will result in unreasonable adverse effect.

The courts have ruled that the fact that a federally-registered pesticide has undergone extensive testing must have some probative value and that the Environmental Appeal Board may assume that a federally-registered pesticide is generally safe.

The Board recognizes that because something is generally safe, it is not necessarily safe in all circumstances. Therefore, the Board must determine, on a permit-by-permit basis, whether the use of a pesticide as stipulated in the permit conditions will result in an unreasonable adverse environmental impact.

The issue of unreasonable adverse impact arises from the *Pesticide Control Act*. Section 6 enables the administrator to issue a permit once satisfied that the pesticide application will not cause an unreasonable adverse effect. While adverse effect is defined in the act as "an effect that results in damage to man or the environment", a definition of the qualifier "unreasonable" is not provided.

The Board has determined that the following will be considered in examining whether the use of a specific pesticide will cause an unreasonable adverse environmental impact:

1. Will the quality of the air, land or water be impaired?
2. Will injury or damage to property, plant or animal life result?
3. Will the welfare of persons be impaired?
4. Will property, plant or animal life be rendered unfit for use?
5. Will loss of enjoyment of property occur?
6. Can the intended benefit be achieved by a method with less inherent environmental risk?
7. Those factors relevant to the matter under appeal which are brought to the Board's attention.

The Board considers anything that negatively affects the land, air, water and/or living things has an adverse environmental impact. The degree of that impact is what determines whether or not it is unreasonable. To rigidly define "unreasonable" by assigning acceptable versus unacceptable quantities, however, would fetter the Board's discretion in assessing the site-specific application under appeal. Unreasonable is, therefore, taken by the Board to mean that which is not suitable under the circumstances.

During the period covered by this report, nine decisions under the *Pesticide Control Act* were rendered. This represented appeals filed by 11 groups and one individual against 10 pesticide use permits and one pest control service licence. None of the appellants chose to be represented by legal counsel. All hearings were conducted as oral procedures, although three were concluded by way of written submission.

The respondents included the Ministry of Environment, Lands and Parks (3 appeals); the Ministry of Forests (2 appeals); the Ministry of Transportation and Highways; Thompson-Nicola Regional District; B.C. Hydro and Power Authority; and, the Canada Minister of Agriculture. The Ministries of Environment, Lands and Parks, and Forests were each represented by legal counsel at one of their appeals. The Ministry of Transportation and Highways also used legal representation.

Of the 10 permits appealed, three allowed the application of TORDON 22K for noxious weed control; three the application of Creosote to rail ties; one the application of Woodfume, Timberlife, Cuperseal, Creosote and PolNu CuRap 20 to hydro poles; one the use of Simazine, Karmex, Roundup, Amsol 500 and Glean for total roadside vegetation control; one the use of Foray 48B (BtK) for European gypsy moth eradication; and the remaining permit allowed the application of MSMA for control of mountain pine beetle brood. The appeal against the pest control service licence concerned amendments to a licence to preclude aerial spraying of pesticide in Surrey and Langley.

In four of the nine decisions the permits were amended and the appeals dismissed. Two decisions dismissed the appeals with no permit amendments but issued comments which were outside of the authority of the panel to address in any other way. One decision dismissed the appeal with no permit amendments, and two decisions allowed the appeals.

5.2 Waste Management Act

Under section 26 of the *Waste Management Act*,

> (1) a person who considers himself aggrieved by a decision of
>
> (b) the director or a district director may appeal to the appeal board.

Section 28 defines the powers of the Board under this *Act* as:

> (3) On considering an appeal, the board may
>
> (a) hold a new hearing,
>
> (b) confirm, reverse or vary the decision appealed from, and
>
> (c) make any decision that the person whose decision is appealed could have made, and that the board considers appropriate in the circumstances.

In the period covered by this report, one decision was set down under the *Waste Management Act*. The appeal concerned the issuance of a permit authorizing the land discharge of treated sewage effluent. The proceedings were by oral hearing with final submissions in writing.

The Waste Management Branch acted as respondent, the permit holder appeared as a third party and a citizen group was the appellant. Only the third party was represented by legal counsel.

The appeal was upheld and the permit was cancelled.

5.3 Water Act

Under section 9 of the *Water Act*,

> (1) A licensee, riparian owner or applicant for a licence who considers that his rights would be prejudiced by the granting of an application for a licence may . . . file an objection to the granting of the application.

Section 38 further defines the appeal procedure by stating:

> (1.1) An appeal lies
>
> (a) to the Environmental Appeal Board from every order of the comptroller, except an order cancelling a licence . . . .
>
> (5) The appeal tribunal may, on an appeal, determine the matters involved and make any order that to the tribunal appears just . . . .

It should be noted that late in 1992 this section was amended to allow the Board to accept appeals against an order cancelling a licence. For the period of this report, however, the section as printed above was in effect.

There were six decisions rendered under the *Water Act* with three appeals involving third parties. The remaining three were between the Water Management Branch as respondent and the appellants. In four of the appeals, none of the parties were represented by legal counsel; in one appeal, both parties used legal counsel; and, in the remaining appeal, only the appellant was represented by counsel.

Two of the appeals pertained to regulating the private use of water; one concerned an appellant requesting plat amendments; one concerned the refusal of the comptroller to allow the appellant to make changes in and about a creek channel; one concerned notification of pond cleaning; and, one concerned the location of a waterline.

Two of the appeals were dismissed with comments, two were dismissed and amendments ordered to the conditional water licences, and one appeal was upheld with amendments ordered to the deputy comptroller's directive. The remaining appeal was in actuality a preliminary hearing concerning the jurisdiction of the Board to interpret and apply section 35 of the *Constitution Act*. The Board found that it had the jurisdiction.

5.4 Wildlife Act

Under section 103 of the *Wildlife Act*,

(1) Where the regional manager makes a decision that affects

(a) a licence, permit registration of a trapline or guide outfitter's certificate held by a person,

(b) an application by a person for anything referred to in paragraph (a),

the person may appeal the decision of the regional manager to the director.

(3) Where the director

(a) exercises the powers of a regional manager respecting the matters referred to in subsection (1),

(b) makes a decision in an appeal from a decision of a regional manager under subsection (1), or

(c) makes another decision that affects a matter referred to in subsection (1),

the person aggrieved by the decision may appeal the decision of the director to the Environmental Appeal Board.

(5) In an appeal, the Environmental Appeal Board may

(a) dismiss the appeal,

(b) send the matter back to the regional manager or director with directions.

The duties of the Board are different under the *Wildlife Act* than the other acts with which the Board deals. In other acts, the Board has the specific authority to make decisions that the decision-maker whose decision is being appealed from could have made.

The Supreme Court of British Columbia has ruled that in appeals under the *Wildlife Act*, the Board can not substitute its opinion for that of the director where the director's decision was made in the lawful exercise of discretion. The Board is charged with determining "whether or not the director properly exercised discretion, that is to say bona fide uninfluenced by irrelevant considerations and not arbitrarily or illegally" (Olsen v. Walker and others, [1989] No. 2286, Duncan Registry, Huddart, J.).

There were nine decisions rendered under the *Wildlife Act*, of which two pertained to wildlife and seven to fisheries. Both fisheries appeals concerned angler guide privileges. Of the wildlife appeals, five concerned the suspension of hunting privileges, one the

refusal to renew a guide outfitter licence, and one a permit to keep wildlife in captivity for commercial purposes. All procedures were conducted as oral hearings with two concluding through written submissions.

In all cases either the deputy director of wildlife or the deputy director of fisheries acted as the respondent. Appellants were private individuals. One of the hearings involved legal counsel on behalf of both parties while neither party in the remaining eight used counsel.

Three decisions (two fisheries, one wildlife) found that the appeals were to be returned to the respective deputy directors with directions, two dismissed the appeal and the remainder were dismissed with comments.

Of the decisions returned to the deputy directors, one fisheries-related decision found the deputy director had erred in law and in the exercise of his discretion. As such, the deputy director was directed to take an action in favour of the appellant.

A second decision in this category also concerned a fisheries decision and the exercise of discretion. The Board found the actions of the branch had contributed to the appellant's situation. The matter was, therefore, returned to the deputy director with directions.

The third decision was returned to the deputy director as there was evidence before the Board that was not before the deputy director when he made his decision. The deputy director was directed to reconsider his decision taking certain Board findings of fact into consideration.

6 SUMMARY

There were 25 decisions rendered in the 1991/92 period. All decisions were the result of oral hearings, although in six cases a portion of the submissions were made in writing.

Hearings for the appeals were held under the following acts:

Pesticide Control Act	9
Waste Management Act	1
Water Act	6
Wildlife Act	9
Commercial River Rafting Safety Act	0

The nine decisions under the *Pesticide Control Act* included:

- four appeals dismissed, permits amended (4 permits)
- two appeals dismissed with comments (2 permits)
- one appeal dismissed (1 permit)
- two appeals allowed (3 permits, 1 service licence)

The one decision under the *Waste Management Act* upheld the appeal and cancelled the permit.

The six decisions under the *Water Act* included:

- two appeals dismissed with comments
- two appeals dismissed, two water licences amended
- one appeal upheld, water licence amended
- one decision determined a jurisdiction issue; appeal postponed

The nine decisions under the *Wildlife Act* included:

- four appeals dismissed with comments
- two appeals dismissed
- one appeal returned to deputy director of wildlife with directions
- two appeals returned to deputy director of fisheries with directions

APPENDIX
SUMMARY ENVIRONMENTAL APPEAL BOARD DECISIONS

What follows are summaries of decisions of the Environmental Appeal Board. Due to the abbreviated nature of this presentation, summaries of the grounds for appeal, orders sought and Board decisions are presented. For specifics on an appeal, the reader is referred to the actual decision.

Pesticide Control Act

91/05 Robson Alternatives to Pesticides v. British Columbia Minister of Transportation and Highways

PUP 102-583-91/93 authorizing the application of TORDON 22K on highway rights-of-way in the Robson Highways District for the control of all noxious weeds listed under the *Weed Control Act*.

A pre-hearing conference was held to refine the grounds for appeal and assist in the exchange of evidence in advance of the hearing. There were 39 grounds for appeal which concerned such items as federal registration of pesticides, past pesticide practice in this area and health effects. The Board found there was no evidence presented to support the appellant's position and denied the appeal. The permit was amended to include additional requirements regarding pesticide-free zones, advertising, locations of domestic water intakes and notification of pesticide use. The Board also made several recommendations, one of which was that the Ministry of Transportation and Highways develop pre- and post-treatment assessment programs to determine the effects of the control program. The Board has been informed that the ministry intends to follow this up.

91/07 Grouse Clan v. British Columbia Minister of Forests, Bulkley Forest District

PUP 401-223-91/93 authorizing the application of MSMA to reduce/eliminate mountain pine beetle brood production.

The ground for appeal was that the use of MSMA could have a harmful effect on the environment. On the basis of evidence presented at the hearing, the panel dismissed the appeal. Recommendations made by the Board prompted the Ministry of Forests to undertake an examination and compilation of information pertaining to MSMA and its effects.

91/11 Thompson Watershed Coalition and Shuswap Thompson Organic Producers Association v. British Columbia Minister of Forests, Kamloops Forest District

PUP 401-217a-91/93 authorizing application of TORDON 22K within specified portions of the Kamloops Forest District for the control and containment of noxious weeds on Crown Land.

The grounds for appeal included concerns about the federal registration of pesticides, the presence of inert ingredients in the full formulation and the effects of the use of the pesticide on the environment. The Board found there was no evidence presented to support the appellant's position and denied the appeal. The permit was amended to address such things as locations of private wells and restrictions governing the application of TORDON 22K to certain soil types. Recommendations concerning permit advertisement and the obligations/responsibilities of Pesticide Control Committee members were made.

91/17 Thompson Watershed Coalition and Shuswap Thompson Organic Producers Association v. Thompson-Nicola Regional District

PUP 116-011a-91/93 authorizing the use of TORDON 22K and Roundup to control noxious weeds in public areas.

The grounds for appeal included concerns regarding inadequate notification of pesticide use, the federal registration process, the potential for drift and leaching of pesticides, and the effects of pesticides on persons and the environment. On the basis of evidence presented, the Board dismissed the appeal. The permit was amended to preclude the application of TORDON 22K to areas of coarse gravelly soils. In addition, recommendations concerning permit advertising, soil information, spraying on private land, well location and the present registration status of TORDON 22K were made.

91/18 Grant Keays v. B.C. Hydro and Power Authority

PUP 105-533-91/93 authorizing the use of Woodfume, Timberlife, Cuperseal and Creosote in the treatment of distribution poles for the prevention of wood rot.

The grounds for appeal concerned the federal registration process and the long-term effects of pesticide use on the environment. As the Board did not find any evidence to support the appellant's position, the appeal was dismissed. The permit was amended to include the use of a product which was felt to be more environmentally friendly than those previously authorized.

91/20 Canadian Earthcare Society v. Administrator, *Pesticide Control Act*, Ministry of Environment, Lands and Parks

PUP 242-032-91/93 authorizing the application of Simazine, Karmex, Roundup, Amsol 500 and Glean to all vegetation to achieve total weed control on roadside, crack and crevice, around signs, poles and hydrants within the municipal boundaries of Kelowna.

The grounds for appeal concerned the actions of the administrator of the *Pesticide Control Act* in deciding to grant the permit. On the basis of the evidence presented, the Board dismissed the appeal and declined to order any permit amendments. The Board did make recommendations concerning the use of standard forms by Pesticide Review Committee members, background information that is provided to Pesticide Review Committee members, fish kills, pesticide applications to sidewalks and the use of alternatives to pesticides.

91/23 B.C. Rail v. Administrator, *Pesticide Control Act*, Ministry of Environment, Lands and Parks

PUPs 134-071-91/93, 134-090-91/93, 134-091-91/93 authorizing the application of Creosote to rail ties.

The grounds for appeal were refined during a pre-hearing conference prior to the actual hearing. At the hearing, the grounds concerned the requirement of "no treatment" zones. The appeal was upheld, and the permits amended to reflect the Board decision. In addition, the Board ordered B.C. Rail to prepare and carry out a plan to monitor the possible effects of Creosote.

92/01 Citizens Association to Save the Environment and the Sierra Club of Western Canada v. Canada Minister of Agriculture

PUP 214-012-92 authorizing aerial and manual application of Foray 48B (BtK) for European gypsy moth eradication.

The grounds for appeal included concerns about the federal registration process, the effects of the pesticide use on the environment, the existence of natural predators, the use of aerial application and the cost of the program. The Board found there was no evidence presented to support the appellants' contentions and dismissed the appeal with no permit amendments.

92/02 Bel-Aire Helicopter Charters Inc. v. Deputy Administrator, *Pesticide Control Act*, Ministry of Environment, Lands and Parks

Pest Control Service Licence No. 2430S (amendment).

One of the issues in the appeal was the attachment of a restriction to the pest control service licence precluding aerial application of agricultural pesticides in Surrey and Langley. The Board found the deputy administrator erred in

addressing the spray restriction by way of the boundaries of two municipalities and ordered that buffer zone widths appropriate to protect residential and environmentally sensitive areas throughout the Lower Mainland region from drift be determined and applied.

Waste Management Act

91/19 Lake Windermere Preservation Society v. Deputy Director of Waste Management, Ministry of Environment, Lands and Parks, and The Beaches Development Corporation

Waste Management Permit PE-08748 authorizing the discharge of treated sewage effluent to ground.

The main issue was the ability of the land to assimilate the treated sewage effluent. On the basis of the evidence presented at the hearing, the panel upheld the appeal and cancelled the permit.

Water Act

91/01 F. Sawada v. Deputy Comptroller of Water Rights, Water Management Division, Ministry of Environment, Lands and Parks, and Don Den Holdings

Conditional Water Licence 67023 held by Don Den Holdings.

The appeal concerned the provision of water for private use and the contention of the appellant that there was insufficient water to satisfy the new and existing licences. Because the intake for the new licence was downstream of the intakes for the existing licences and because of the principal of "first in time, first in right", the Board found the existing licensees would not be affected by the new licence. The appeal was dismissed.

91/02 B.L. Lundberg v. Deputy Comptroller of Water Rights, Water Management Branch, Ministry of Environment, Lands and Parks, and S./F. Wright

Conditional Water Licence 48632 held by B.L. Lundberg.

The appeal concerned the location of a proposed waterline. Originally the waterline was to be in one location but the deputy comptroller amended the licence to change the waterline location. The Board found that, given the nature of the properties in question, the first waterline location should not have been approved. The appeal was dismissed and the water licence amended to add a construction restriction relating to the environmental safety of the creek crossing.

91/03 J.B. Smidesang v. Deputy Comptroller Water Rights, Water Management Branch, Ministry of Environment, Lands and Parks

Conditional Water Licence 65334 held by J.B. Smidesang.

The appellant was appealing a requirement on the water licence that he notify a downstream licence holder three days in advance of pond cleaning operations.

The Board upheld the appeal and amended the licence to address operation of the ponds and notification of the water district engineer.

91/06 Charco Water Distribution Ltd. v. Deputy Comptroller of Water Rights, Water Management Branch, Ministry of Environment, Lands and Parks

Conditional Water Licence 40935 and accompanying plat.

The appeal was from a decision of the deputy comptroller to refuse a request from the appellant to amend the plat accompanying the water licence to show the complete waterworks, and ownership of the works. The Board dismissed the appeal but ordered a disclaimer statement attached to the plat and an explanatory drawing attached as an annex to the plat.

91/10 Mr. and Mrs. G. Robertson v. Deputy Comptroller of Water Rights, Water Management Branch, Ministry of Environment, Lands and Parks

Refusal of Application for Approval A600322.

The appellant had applied for permission to remove accumulated material from a stream bed to allow the free flow of water for the prevention of further flooding of his property. The Board, due to the potential for impact on the fish of the creek, the ineffectiveness of the appellant's earlier instream work and the existence of other options, dismissed the appeal.

91/16 Okanagan Indian Band v. Deputy Comptroller of Water Rights, Water Management Branch, Ministry of Environment, Lands and Parks and C. Kwasnicki/G. Hilderman

The grounds for appeal included a claim that the order appealed from infringes on the appellant's aboriginal or treaty rights respecting water and fishing, which are protected by section 35 of the *Constitution Act*. The respondent contended that the Board does not have the jurisdiction to interpret and apply the *Constitution Act*, nor to determine whether the appellant has aboriginal water or fishing rights which are recognized and confirmed by section 35 of the *Constitution Act*.

This was a preliminary hearing to determine the jurisdiction issue. The Board decided that as the *Environment Management Act* and the *Water Act* mandates the Board to hear evidence regarding points of law that it did have the jurisdiction to hear the appeal. The appeal has been adjourned to a future date.

Wildlife Act

91/04 A. Scopazzo v. Acting Deputy Director of Wildlife, Ministry of Environment, Lands and Parks

Appeal against decision to suspend hunting privileges for one year.

After the appellant was convicted of dangerous hunting, the acting deputy director suspended his hunting privileges for one year. There was no evidence to show the acting deputy director erred in the exercise of discretion and the appeal was dismissed. The Board commented on hunting practices and the actions of Crown counsel.

91/08 LaFrance v. Deputy Director of Wildlife, Ministry of Environment, Lands and Parks

Appeal against decision to refuse to renew a guide outfitter licence.

The *Wildlife Act* requires a guide outfitter to be present in the guide area during substantially all times assistant guides are guiding for game. As the appellant had violated this section of the act, the deputy director refused to renew his guide outfitter's licence. The Board dismissed the appeal as there was no evidence presented to show an error in the deputy director's exercise of discretion.

91/09 Mr. R. Thompson v. Deputy Director of Fisheries, Ministry of Environment, Lands and Parks

Appeal against a decision regarding angler day quota.

The appellant appealed against the deputy director's decision awarding an angler day quota which was far below his historical use. The Board found in the appellant's favour and directed the deputy director to reconsider his decision taking into consideration certain Board findings of fact.

91/12 T. Degrood v. Deputy Director of Fisheries, Ministry of Environment, Lands and Parks

Appeal against a decision to refuse to grant angling guide privileges.

The appellant was refused an angling guide licence because he had not been licensed to guide on the Bulkley River during a specific grandfather period.

This refusal was found by the Board to be an error in law and the regional manager was directed to take certain actions in considering an application from the appellant for the following fishing season.

91/13 G. Ovens v. Deputy Director of Wildlife, Ministry of Environment, Lands and Parks

Appeal against decision to suspend hunting privileges for three years.

Following the appellant's convictions of discharging a firearm in a no shooting area and of failing to cancel his species tag, the deputy director suspended his hunting privileges for three years. There was no evidence to show the deputy director erred in the exercise of his discretion and the appeal was dismissed.

91/14 N. Helland v. Deputy Director of Wildlife, Ministry of Environment, Lands and Parks

Appeal against decision to suspend hunting privileges for three years.

The appellant was convicted of obstructing an officer from exercising his duty. The deputy director subsequently suspended his hunting privileges for three years. As there was no evidence to show the deputy director erred in exercising her discretion, the Board dismissed the appeal. The Board also decided against refunding the appellant's hunting licence fee.

91/15 C. Helland v. Deputy Director of Wildlife, Ministry of Environment, Lands and Parks

Appeal against decision to suspend hunting privileges for two years.

As a result of a plea bargain arranged between the appellant's legal counsel and Crown counsel, the appellant plead guilty to failing to cancel the appropriate species tag. Following the appellant's conviction, the deputy director suspended his hunting privileges for two years. The Board, finding there was no evidence that the deputy director erred in the exercise of his discretion, dismissed the appeal. The Board also decided against refunding the appellant's hunting licence fee.

91/21 Mr. and Mrs. T. Walker v. Deputy Director of Wildlife, Ministry of Environment, Lands and Parks

Appeal against the decision regarding a permit to keep wildlife (skunks) in captivity for commercial purposes.

Following an appeal to the deputy director against a decision of the regional manager, the appellants were issued a permit authorizing them to keep skunks in captivity for supplying the pet trade but only outside of British Columbia.

This decision was appealed to the Board. The Board ordered the matter returned to the director because information was placed before the Board which was not before the deputy director when his original decision was made.

91/22 J.L. Dougan v. Deputy Director of Wildlife, Ministry of Environment, Lands and Parks

Appeal against decision to suspend hunting privileges for one year.

Following the appellant's court conviction for failing to retrieve edible portions of a game carcass, the deputy director suspended his hunting privileges for one year. The appeal was dismissed as there was no evidence presented to show the director erred in exercising his discretion. The Board made a recommendation regarding the branch's policy manual.